

**GOLDSTEIN, GELLMAN, MELBOSTAD, GIBSON & HARRIS, LLP**

Lee S. Harris, Esq. SB# 76699  
 Michael W. Flynn, Esq. SB# 247501  
 1388 Sutter Street, Suite 1000  
 San Francisco, CA 94109-5494  
 Telephone: (415) 673-5600  
 Facsimile: (415) 673-5606

Attorneys for Plaintiff  
**SEAN MICHAEL CARTER**

**LEWIS BRISBOIS BISGAARD & SMITH LLP**

Julian J. Pardini, Esq. SB# 133878  
 Stephen J. Liberatore, Esq. SB# 129772  
 One Sansome Street, Suite 1400  
 San Francisco, California 94104  
 Telephone: (415) 362-2580  
 Facsimile: (415) 434-0882

Attorneys for Defendant  
**NATIONWIDE MUTUAL INSURANCE COMPANY**

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

SEAN MICHAEL CARTER, ) CASE NO. 3:07-CV-05588 CRB

Plaintiff, ) **JOINT CASE MANAGEMENT**  
 ) **CONFERENCE STATEMENT**

v.

K&K INSURANCE GROUP, INC.,  
 d/b/a SPECIALTY BENEFITS  
 ADMINISTRATOR, INC.; NATIONWIDE  
 LIFE INSURANCE COMPANY;  
 NATIONWIDE MUTUAL INSURANCE  
 COMPANY; AON CORPORATION, and  
 DOES 1-100,  
 Defendants.

) Date: July 21, 2008  
 Time: 9:00 a.m.  
 Crtrm: 8

The Hon. Charles R. Breyer

**JOINT CASE MANAGEMENT CONFERENCE STATEMENT**

Plaintiff SEAN MICHAEL CARTER ("Plaintiff") and Defendant NATIONWIDE  
 MUTUAL INSURANCE COMPANY submit the following Joint Case Management Conference  
 Statement.

1    **1. Jurisdiction and Service**

2       The Court has jurisdiction pursuant to 28 U.S.C. section 1441(b) (diversity of citizenship).  
 3       The parties are unaware of any issues regarding personal jurisdiction or venue. All parties have  
 4       been served. All Defendants, except Nationwide, have been dismissed with prejudice.

5    **2. Facts**

6       On April 27, 2005, Plaintiff suffered catastrophic injury when he attempted a “double front  
 7       flip” at Golden Gate Gymnastics (“GGG”) in Concord, CA. At that time, Plaintiff was either an  
 8       independent contractor or employee of GGG. In effect at the time of Plaintiff’s injury was a  
 9       comprehensive general liability insurance policy (“the Policy”) that Nationwide had issued to  
 10      GGG’s proprietor, Michael Lynch. The Policy provided coverage, subject to various exclusions  
 11      and conditions, for medical payment benefits up to \$150,000.

12      Plaintiff submitted a claim to Nationwide under the Policy for medical payment benefits.  
 13      Citing various Policy exclusions and conditions, Nationwide denied the claim. This litigation  
 14      followed.

15       (Plaintiff also filed a personal injury action against Mr. Lynch and others in Contra Costa  
 16      County (CA) Superior Court. That case settled in May 2007 for \$1 million.)

17    **3. Legal Issues**

18       The principal legal issues in dispute are:

- 19       a.      Whether Plaintiff was entitled to medical payment benefits under the Policy;
- 20       b.      Whether Nationwide breached the insurance contract in denying Plaintiff’s claim  
                   for medical payment benefits;
- 21       c.      Whether California law allows Plaintiff to assert a cause of action against  
                   Nationwide for breach the implied covenant of good faith and fair dealing, and if  
                   so, whether Nationwide breached the implied covenant; and
- 22       d.      Whether Nationwide, if it did breach the insurance contract and the implied  
                   covenant of good faith and fair dealing, should be subjected to punitive damages.

23    **4. Motions**

24       There are no pending motions. Nationwide anticipates that it will file a motion for summary

1 judgment or motion for partial summary judgment should the case not settle at mediation.

2 **5. Amendment of Pleadings**

3 The parties do not anticipate that the pleadings will be amended.

4 **6. Evidence Preservation**

5 Nationwide has undertaken to preserve all electronically stored information with respect to  
6 Plaintiff's claim for medical payment benefits.

7 **7. Disclosures**

8 The Parties certify that they have complied with the initial disclosure requirements of  
9 Federal Rules of Civil Procedure, Rule 26, and that they have made the following disclosures:

- 10 a. Names and identifying information of witnesses;
- 11 b. Plaintiff's non-privileged documents pertaining to medical services received.
- 12 c. Nationwide's non-privileged documents, including, but not limited to:
  - 13 i. The Nationwide policy; and
  - 14 ii. The Nationwide claim file, including electronic claim notes and e-mails.

15 **8. Discovery**

16 Plaintiff propounded requests for production of documents to Nationwide, to which  
17 Nationwide responded and produced non-privileged documents. Nationwide noticed Plaintiff's  
18 deposition, but the deposition has been postponed due to Plaintiff's inability to present for  
19 deposition in light of his medical condition.

20 **9. Class Actions**

21 Not applicable.

22 **10. Related Cases**

23 There are no pending related cases.

24 **11. Relief Sought**

25 By his complaint, Plaintiff seeks special and general damages, and punitive damages, costs  
26 and attorneys' fees, and prejudgment interest. Nationwide contends that, under California law,  
27 only Policy medical payments benefits, up to \$150,000, are available to Plaintiff.

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1   **12. Settlement and ADR**

2         The Parties have filed a Stipulation and Proposed Order Selecting an ADR process,  
3 specifying "Private Mediation." The Parties have agreed to employ the services of the  
4 Honorable Eugene Lynch, U.S. District Court Judge (ret.), and Judge Lynch has agreed to act as  
5 mediator. Mediation was scheduled for March 12, 2008, but had to be postponed due to Judge  
6 Lynch's illness; it was re-scheduled for June 30, 2008, but had to be postponed again due to  
7 Plaintiff's having undergone recent surgery. The mediation is now scheduled for September 3,  
8 2008.

9   **13. Consent to Assignment to United States Magistrate Judge for Trial**

10      The Parties do not consent to the assignment of this action to a United States Magistrate  
11 Judge for trial.

12   **14. Other References**

13      The Parties do not believe that the case is suitable for reference to binding arbitration, a  
14 special master, or the Judicial Panel on Multidistrict Litigation.

15   **15. Narrowing of Issues**

16      The Parties believe the issues are straightforward and succinctly stated: (1) Did the Policy  
17 afford coverage to Plaintiff for medical payment benefits. (2) Did Nationwide breach the  
18 insurance contract in denying Plaintiff's claim for medical payment benefits? (3) May Plaintiff  
19 sue Nationwide for breach of the implied covenant of good faith and fair dealing? If so, did  
20 Nationwide act in bad faith in denying Plaintiff's claim for medical payment benefits? (4) If  
21 Nationwide did breach the contract and acted in bad faith, what are Plaintiff's damages? and  
22 (5) Is Plaintiff entitled to punitive damages? (If Plaintiff is not entitled to assert a cause of action  
23 for breach of the implied covenant, then punitive damages will not be available.)

24   **16. Expedited Schedule**

25      The parties do not believe this action can be handled on an expedited basis with  
26 streamlined procedures.

27      ///

28      ///

### **17. Proposed Schedule**

Mediation: September 3, 2008

Designation of Experts: February 2, 2009

Discovery Cut-off: March 1, 2009

Deadline for Dispositive Motions: March 13, 2009

Pre-trial Conference: April 1, 2009

Trial: April 14, 2009 (7-10 court days)

## 18. Trial

Plaintiff has demanded trial by jury.

Nationwide does not believe trial by jury is warranted given that only questions of law are presented. Hence, Nationwide reserves its right to trial by jury.

## **19. Disclosure of Non-part Interested Entities or Persons**

The Parties have filed their respective "Certification of Interested Entities or Persons." The identities of persons, associations, firms, partnerships, corporations and other entities known by the parties to have (1) a financial interest in the subject matter at issue or in a party to this action, or (2) any other kind of interest that could be substantially affected by the outcome of this action, are:

- a. Plaintiff;
  - b. Plaintiff's counsel of record, the law firm of Goldstein, Gellman, Melbostad, Gibson & Harris, LLP, and attorneys and employees associated therewith;
  - c. Plaintiff's former counsel of record, the law firm of Jones, Clifford, Johnson & Johnson, LLP, and attorneys and employees associated therewith;
  - c. Defendant Nationwide, and its affiliated entities and employees;
  - d. Nationwide's counsel of record in this action, the law firm of Lewis Brisbois Bisgaard & Smith LLP, and attorneys associated therewith; and
  - e. Nationwide's former counsel of record in this action, the law firm of Long & Levit LLP, and attorneys and employees associated therewith.

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1   **20. Miscellaneous**

2           Counsel for the parties will be prepared at the time of the Case Management Conference to  
3 provide additional information as the Court may deem necessary to facilitate the just, speedy and  
4 inexpensive disposition of this matter.

5  
6 Dated: July \_\_\_, 2008

GOLDSTEIN GELLMAN MELBOSTAD GIBSON &  
HARRIS, LLP

7  
8 By \_\_\_\_\_

9           Lee S. Harris  
10           Michael W. Flynn  
11           Attorneys for Plaintiff  
12           SEAN MICHAEL CARTER

13  
14 Dated: July \_\_\_, 2008

LEWIS BRISBOIS BISGAARD & SMITH LLP

15  
16 By \_\_\_\_\_

17           Julian J. Pardini  
18           Stephen J. Liberatore  
19           Attorneys for Defendants  
20           NATIONWIDE MUTUAL INSURANCE COMPANY